

§ 780.915 “Place of first processing.”

Under section 13(b)(16) the fruits or vegetables may be transported to only two types of places. One is a “place of first processing”, which includes any place where canning, freezing, drying, preserving, or other operations which first change the form of the fresh fruits or vegetables from their raw and natural state are performed. (For overtime exemption applicable to “first processing,” see part 526 of this chapter.) A plant which grades and packs only is not a place of first processing (*Walling v. DeSoto Creamery and Produce Co.*, 51 F. Supp. 938). However, a packer’s plant may qualify as a place of first marketing. (See § 780.916.)

§ 780.916 “Place of * * * first marketing.”

A “place of * * * first marketing” is the second of the two types of places to which the freshly harvested fruits or vegetables may be transported from the farm under the exemption provided by section 13(b)(16). Typically, a place of first marketing is a farmer’s market of the kind to which “delivery to market” is made within the meaning of section 3(f) of the Act when a farmer delivers such commodities there as an incident to or in conjunction with his own farming operations. Under section 13(b)(16), of course, there is no requirement that the transportation be performed by or for a farmer or as an incident to or in conjunction with any farming operations. A place of first marketing may be described in general terms as a place at which the freshly harvested fruits or vegetables brought from the farm are first delivered for marketing, such as a packing plant or an establishment of a wholesaler or other distributor, cooperative marketing agency, or processor to which the fruits or vegetables are first brought from the farm and delivered for sale. A place of first marketing may also be a place of first processing (see *Mitchell v. Budd*, 350 U.S. 473) but it need not be. The “first place of packing” to which the just-harvested fruits or vegetables are transported from the farm is intended to be included. (See 107 Cong. Rec. (daily ed.) p. 4523.) Transportation to places which are not

first processing or first marketing places is not exempt.

§ 780.917 “Within the same State.”

To qualify for exemption under section 13(b)(16), the transportation of the fruits or vegetables must be made to the specified places “within the same State” in which the farm is located. Transportation is made to a place “within the same State” when the commodities are taken from the farm, hauled and delivered within the same State to first markets or first processors for sale or processing at the place of delivery. The exemption is not provided for transportation to any place of first marketing or first processing across State lines and does not apply to any part of the transportation within the State of fruits or vegetables destined for a place in another State at which they are to be first marketed or first processed. Transportation from the farm to an intermediate point in such a journey located within the same State would not qualify for exemption; it would make no difference that the intermediate point is a place of first marketing or first processing for other fruits or vegetables if it is not actually such for the fruits or vegetables being transported. On the other hand, where the place to which fruits or vegetables are transported from the farm within the same State is actually the place of first marketing or first processing of those very commodities, transportation of the goods across State lines by the first-market operator or first processor, after such delivery to him within the State, does not affect the nature of the delivery to him as one made within the State.

EXEMPT TRANSPORTATION OF FRUIT OR VEGETABLE HARVEST EMPLOYEES**§ 780.918 Requisites for exemption generally.**

Section 13(b)(16), in clause (B), provides an exemption from the minimum wage and overtime pay provisions of the Act for an employee during any workweek in which all the following conditions are satisfied:

(a) The employee must be engaged “in transportation” of harvest workers; and